



May 21, 2010

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RE: Comments on Public Hearing Document Omnibus Amendment 13 to the Atlantic Mackerel, Squids and Butterfish Management Plan, Amendment 3 to the Bluefish Management Plan, Amendment 15 the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan and Amendment 3 to the Tilefish Management Plan

Dear Mr. Furlong:

Please accept the following comments submitted on behalf of the Recreational Fishing Alliance (RFA)¹ and RFA New Jersey Chapter.

I. General Comments

RFA has major concerns with the public hearing document and the glaring absence of criticism regarding the Marine Recreational Fishing Statistics Survey (MRFSS) and its limitations in monitoring and estimating performance of the recreational fishing sector. Many of the proposed options in the Omnibus Amendment particularly those that deal with proactive and reactive accountability measures (AMs), demand accuracy and timeliness far beyond the current capabilities and design of MRFSS. This point has been made by National Marine Fisheries Service (NMFS) in response to similar action being proposed for the recreational scup fishery through Amendment 8 to the Summer Flounder, Scup and Black Sea Bass Fishery Management Plan.² NMFS went beyond calling the use of MRFSS in this manner as inappropriate and indicated it was in violation of numerous national standards.

"The provision that would deduct the annual recreational harvest in excess of the specified limit from the limit for the following year would base the deductions on the results of the

¹ The Recreational Fishing Alliance (RFA) is a national, 501(c)(4) non-profit grassroots political action organization that has been representing individual sport fishermen and the sport fishing industry since 1996. The RFA Mission is to safeguard the rights of saltwater anglers, protect marine, boat and tackle industry jobs and ensure the long-term sustainability of U.S. saltwater fisheries. RFA members include individual anglers, boat builders, fishing tackle manufacturers, party and charter boat businesses, bait and tackle retailers, marinas, and many other businesses in fishing communities.

² http://www.mafmc.org/fmp/pdf/SFSCBSB_Amend_8.pdf

Marine Recreational Fishery Statistics Survey (MRFSS). This measure impacts the annual allocation of the recreational sector of the fishery with no clear conservation benefit, in violation of national standard 4. The MRFSS is an excellent fishery management tool for the purpose for which it was designed, that is, giving an overall projection of recreational catch from the recreational fishery from Maine to Texas. However, the survey was not intended to be used as a basis for calculating an overage in the recreational fishery that would then be deducted from the quota established for the subsequent year. The survey variability becomes problematic, and this problem is further exacerbated if the fishery is managed on a regional quota basis as is a possibility in the scup fishery. In addition, the survey variability could affect residents of different states unevenly with respect to quota overages. These problems make the provision inconsistent with national standard 4. Likewise, because the survey is based on contacts with recreational fishermen, it reflects a sampling variability in addition to variations in the stock. The effects of this sampling variability render its use to calculate overages inconsistent with national standard 6. Finally, it would take a significant expenditure of funds to reduce the survey variability, especially as the geographic area for which estimates are made is reduced, to render it consistent with national standard 2. This conflicts with national standard 7.”³

Specific to the revised National Standard 1 guidance cited on page 7 of the public hearing document which has been identified as a major driving force of the entire Omnibus Amendment, NMFS finds this approach and its reliance on MRFSS inconsistent with National Standard 1. This is a profound contradiction that must be resolved.

“This raises concern regarding its consistency with national standard 1. In failing to account for these variations, the use of the survey affects the overall ability of the entire scup quota management process to achieve on a continuing basis, the optimum yield from this fishery. This raises concern regarding its consistency with national standard 1.”⁴

In response to a Congress mandate to address deficiencies of MRFSS, the National Research Council (NRC) conducted a peer review of the data collection program and released their findings in 2006. Statements such as “fatally flawed” arose from the report and a series of recommendations were made available to fisheries managers, legislators, and stake holders. NRC indicated that a complete overhaul was necessary to meet the ever increasing demands of fisheries management as expressed in the following statement.

“The MRFSS (as well as many of its component or companion surveys conducted either indirectly or independently) should be completely re-designed to improve the effectiveness and appropriateness of sampling and estimation procedures, applicability to various kinds of management decisions, and usefulness for social and economic analyses.”⁵

and,

“For recreational fishing surveys, the designs, sampling strategies, and collection methods of recreational fishing surveys do not provide adequate data for management and

³ **Federal Register** Vol. 61, No. 107, Docket Number 960520141-6141-01.

⁴ **Federal Register** Vol. 61, No. 107, Docket Number 960520141-6141-01.

⁵ National Research Council. Committee on the Review of Recreational Fisheries Survey Methods, National Research Council, ISBN: 0-309-66036-X. page 3

*policy decisions.*⁶

Following the NRC findings and consistent with recommendations offered by members of the recreational fishing community, MRFSS was slated to be improved through language included in the 2006 Magnuson Reauthorization. RFA supported having these improvements implemented in order to address significant deficiencies in the MRFSS program that were having a deleterious effect on the recreational fishing community. MSA section 401 (g) mandates the improvement of MRFSS and other recreational data collection programs through the development of a saltwater angler registry, implementation of National Research Council recommendations, and enacting five measures that would produce immediate improvements. The saltwater registry was delayed one year and only just became effective January 1, 2010. Calibration between the random digit dialing survey and a known sampling frame created through the registry will require a minimum of 3 years to fully determine biases and their magnitude. Of the 18 NRC recommendations, RFA can only identify 5 that have been fully or partially implemented. Congress, recognizing the importance and urgency of improving recreational data collection programs establish a deadline⁷ for enacting improvements under this section of January 1, 2009. That deadline has expired and NMFS remains severely delinquent on these critical improvements. RFA believes the MAFMC has full justification to postpone moving forward with the recreational component of the Omnibus Amendment until all sections of MSA 401 (g) are fully implemented and a report is submitted to Congress. As expressed by NMFS, the NRC and the fishing community, MRFSS was not designed nor intended to collect data in a timely or accurately enough manner to meet the demands of the Omnibus Amendment. Doing so with the current MRFSS would violate no less than five of the 10 National Standards.

Another major concern lies with the lack of acknowledgment of optimum yield (OY). National Standard 1 mandates that conservation and management measures shall prevent overfishing while achieving on a continuing basis, the optimum yield from each fishery.⁸ Optimum yield is defined by MSA as the yield from a fishery that provides the greatest benefit to the Nation in terms of food production and recreation, the amount equal to maximum sustainable yield (MSY) reduced by relevant economic, social or ecological factors, and for rebuilding fisheries, the level of yield that produces MSY.⁹ In the most general sense, optimum yield should be a level of fishing that occurs on rebuilt stocks that offsets sacrifices, loss opportunity and loss participation that have accumulated during rebuilding. This is consistent with the basic premise used by NMFS when rationalizing conservation measures in the present that result in negative socioeconomic impacts. RFA further believes this to have been the intent of Congress when passing the Sustainable Fisheries Act in 1996.

The Omnibus Amendment fails to indicate where optimum yield would fall on the chart included on page 8 of the document. It is understood that OY can be equal to or less than MSY. Specific to the Omnibus Amendment, staff has indicated that OY would most likely equal the Allowable Biological Catch (ABC) set by the Science and Statistical Committee (SSC). The RFA can make

⁶ National Research Council. Committee on the Review of Recreational Fisheries Survey Methods, National Research Council, ISBN: 0-309-66036-X.

⁷ MSA § 401 (g)(3)(D)

⁸ MSA § 301 (a)(1)

⁹ MSA § 3(33)(A-C)

a prediction about where OY will fall on the flow chart on page 8 but by leaving this out of the document, fishermen are not made fully aware of the implications of the amendment. If OY is equal to ABC and then ACLs and ACT are set below the ABC, fishermen will never fish at OY even with rebuilt fisheries. This is counter to what NMFS has told the fishing communities to quell concerns about negative impacts during rebuilding. RFA believes it is irresponsible to not make fishermen fully aware that this Omnibus Amendment will institutionalize fishing levels below OY even once rebuilding objectives are achieved.

RFA has explained in comments submitted to other fishery management councils as well as testimony before the House Subcommittee on Insular Affairs, Oceans and Wildlife that MRFSS is neither accurate nor reliable enough to implement accountability measures and annual catch limits in the recreational sector. RFA stands by this position and contends that it is completely inappropriate for the MAFMC to move forward with the section of MSA that deals with ACLs and AM while ignoring critical sections that deal specifically with recreational data collection improvements necessary

II. Section 1.0 Acceptable Biological Catch (ABC) Alternatives.

RFA supports Alternative 1A No Action on ABC control rule. RFA acknowledges that Alternative 1B would perhaps simplify the council member's ability to evaluate a confidence level of a particular stock assessment and subsequent SSC ABC recommendation. The problem with simplifying the process by assigning a number to an assessment is that council members will not take the time to review the supporting documentation associated with a SSC recommendation or stock assessment. As the MAFMC is fully aware, every SSC recommendation includes a section that discusses the scientific uncertainty that was considered during the recommendation setting process. This uncertainty is ultimately dealt with in the SSC recommendation. Uncertainty simply means there is a large amount of variability in estimations of fishing mortality and/or biomass due to missing or less than reliable data that is incorporated at the stock assessment level. In a fishery such as scup, the uncertainty may demand a level 4 but in application, the uncertainty only means the estimate of abundance may vary from 300% rebuilt to 100% rebuilt. Yet, the stigma associated with a level 4 assessment may prompt council members to reduce ACLs or ACT unnecessarily. A low assessment grading may have the unintended consequence of misleading council members and the public that a stock is not responding to management measures or is a state of decline. As seen in the scup fishery which would likely be assigned a proposed level 4, a low assessment level does not mean a stock is performing poorly. Of additional concern, assessment grading levels may be used by NMFS as justification to supersede council recommendations or existing regulation under section MSA 305§ (c)(1).

Currently, there are fishing mortality targets contained within the summer flounder, scup and black sea bass fishery management plan that promote rebuilding or maintenance of these fisheries. The most recent assessment for these species indicate that in the scup and black sea bass fisheries, the current fishing mortality estimates are .048 and 0.28 respectively. These estimates are considerably under the F_{msy} values for these fisheries set at 0.177 and 0.42. It should be noted that projections produced by Council staff using F_{msy} values for scup and black sea bass show a continued increase in stock size. Both fisheries have already achieved their respective rebuilding targets and therefore are no additional rebuilding is required. Since

continued rebuilding is projected under annual catch limits consistent with fishing levels of 2009, it seems extremely remote that even if fishing pressure was doubled compared to 2009 levels that overfishing would occur. The very definition of overfishing as defined by MSA describes it as taking too many fish from the stock to support MSY on a continuing basis and yet, F_{msy} for these species would cause rebuilding not a decline.

In addition, RFA does not support Alternative 1B due to the lack of available funding or commitment on behalf of NMFS to move fisheries from low stock assessment levels to higher ones. Fisheries that are assigned a level 4 will most likely wallow at the level for minimum of 10 years because there is currently no program in place that has the potential to gather the data necessary to improve their stock assessments. Many stock assessments could see improvements by gathering empirical information on life history parameters such as natural mortality. Yet, there is no funding mechanism to prompt this action. In fact, the FY 2011 NOAA budget cut millions of dollars from cooperative research programs. RFA believes it is unwise to lock fisheries into assigned assessment levels knowing there are no options to improve their situation.

III. Section 2.0: Council Risk Policy Alternatives

RFA supports Alternative 2C: Stock Replenishment Threshold with Inflection at B/B_{msy} . RFA supports the use of inflection points based on B/B_{msy} ratio where the probability of overfishing is allowed to increase as the status of the stock increases. However, RFA suggests that two or preferably three inflection points are included in Option 2C similar to inflection points in Option 2E. RFA specifically suggests developing a B/B_{msy} vs Probability of Overfishing curve with a stock replenishment threshold set at $0.1 B/B_{msy}$. The first inflection point would correspond to a $.75 B/B_{msy}$ ratio and 40% overfishing probability. The second inflection point would correspond to a B/B_{msy} ratio of 1.0 and a 45% probability of overfishing and a final inflection point at $1.5 B/B_{msy}$ with the probability of overfishing plateaus at 50%. This represents a shift towards the origin and allows the fishing community to utilize rebuilding success at a quicker rate.

RFA does not support the options contained in section 2.0 that create an artificially low probability of overfishing solely on the basis of scientific uncertainty. All of the important recreational fisheries under the MAFMC jurisdiction have F_{msy} or F_{msy} proxy values. These values and all other biological reference points (BRP) are established through the stock assessment workshop and peer review process. As these numbers are developed, considerable discussion is had on every data point that is included in the numerical models. With data sets that contain more variability as would be expected in proposed level 4 stock assessment fisheries, stock assessment participants add numerous levels of precaution to account for the scientific uncertainty. Even basic parameters such as natural mortality are not always empirically based but are set using assumptions that also include a level of precaution. This noted, it is fair to conclude that fisheries with high coefficient of variability and other characteristics of a proposed level 3 or 4 assessment have a higher level of precaution incorporated into their BRP. Therefore, risk assigned to fisheries by the MAFMC should be independent of assessment level because the risk is already dealt with through the individual assessments. RFA does not support any reduced SSC ABC recommendation as this number is already conservative in terms of dealing with scientific uncertainty.

In addition, RFA does not support options contained in Section 2.0 that link stock assessment levels to a fixed risk policy. As mentioned by the chair of the SSC, most fisheries in the Mid-Atlantic management area would fall in the proposed level 4 stock assessment level. It is unlikely that there will be much progress in moving stocks from level 4 to levels 2 or even level 3 considering the significant financial investment necessary and lack of funding currently available.

The public hearing document indicates that the MAFMC is also considering the appropriateness of a stock replenishment threshold. The concept of a SRT is valid but it is unlikely that a stock could cascade out of control to a B/B_{msy} ratio of 0.1 due to fishing mortality considering the very strict language in MSA. For stocks that are currently rebuilt such as scup and black sea bass, MSA specifies that a rebuilding plan be initiated if these stocks were to fall below the overfished threshold, thus rebuilding requirements would be set through that process. RFA does have concerns with the use of SRT where the probability of overfishing would be set at zero. This situation would not allow any directed fishing and could potential prompt regulations enacted in other recreational fisheries that result in incidental catch. That could have profound impacts on many important recreational fisheries.

IV. Section 3.0: Annual Catch Limits (ACLs) and Accountability Measure (AMs) Alternatives

RFA's comments on this section pertain to the bluefish, summer flounder, scup and black sea bass fisheries. RFA generally supports the flow charts for the above mentioned species on pages 36, 46, 52, and 58 respectively. However, RFA takes issue with all the flowcharts in that they identify scientific uncertainty first deducting catch levels from the overfishing limit (OFL) and do not specifically identify OY. As mentioned earlier in our comments, OFL is a biological reference point set at the stock assessment level. Stock assessments by design, deal with scientific uncertainty when developing biological reference points as they relate to MSY. The SSC accounts for scientific uncertainty in making ABC recommendations and uses the OFL as guidance. Therefore, scientific uncertainty is accounted for at two levels before ACLs and ACT are set through the Omnibus Amendment process. While it is important to understand the multiple levels at which available quota is removed to deal with scientific uncertainty, the fishing community and managers do not have any understanding how these decisions translate into actual pounds of fish. When the final harvest limits are set, recreational anglers are often frustrated by the limited options available to them in setting seasons, size limits and bag limits due to inadequate harvest limits. Many of the most important recreational fisheries are fully rebuilt and near rebuilt which causes a perplexing situation in the recreational sector because regulations have become more and more restrictive. The flowcharts in this section, beginning with the stock assessment process, should identify either the poundage or percentage removed from the OFL to the recreational harvest limit or target beginning at the stock assessment level.

As more recreational fisheries move into a rebuilt or near rebuilt status, regulatory discards and its associated mortality account for a larger portion of the recreational annual catch limit. In the summer flounder fishery, discard mortality is now equal to harvest. While there is some benefit in discarding in fisheries that have a high nonconsumptive value such as marlin and to some extent striped bass and bluefish, regulatory discards in the summer flounder fishery serves no

purpose. The consequence is reduced recreational harvest limits and less flexibility in setting seasons, size limits, and bag limits. Furthermore, with discards being removed at a level above the recreational harvest limit, it will be difficult to correct this problem under the provisions of the Omnibus Amendment.

Action Alternatives for Atlantic Mackerel

RFA does not support proactive AMs in the recreational Atlantic Mackerel fishery. Recreational harvest represents a minimal percentage of the overall domestic harvest and recreational harvest has remained stable over the 28 year timeframe MRFSS has been in operation. The recreational mackerel fishery is extremely dependent upon weather. Combined with a traditional mackerel season that occurs when MRFSS sampling is nominal, landings have the potential to be highly variable from year to year. MRFSS currently does not support this concern and in fact estimates indicate stable landings from the recreational sector. However, MRFSS is unpredictable and this traditional fishery should not be penalized through reactive AMs because of when and how it is prosecuted and the inability of MRFSS to adequately monitoring it. Therefore, RFA does not support reactive AMs for the recreational mackerel fishery nor does it support affording the NMFS Regional Administrator the authority to invoke inseason adjustments and/or closures based on MRFSS. This is simply not acceptable.

Action Alternative for: Atlantic Bluefish ACL and AM

RFA supports Sub-option B for reactive AMs in the recreational bluefish fishery. RFA does not support general recreational closure authority being placed with NMFS Regional Administrator. For the past 12 years, a third of all bluefish caught are released ACL=ABC which includes discards.

Action Alternatives for: Summer Flounder, Scup and Black Sea Bass

RFA submits the following general comments that are relevant to all three species. For all species, RFA supports a minimum 3-year ACLs evaluation as described by Sub-Option B. As mentioned in our general comments, MRFSS was designed to show trends in recreational fishing activity. In fact, MRFSS becomes more accurate as the terminal years moves farther from the year of question. This well known limitation of MRFSS should automatically cause the MAFMC to reject Sub-Option A for the recreational summer flounder, scup and black sea bass fisheries.

Again citing the limited capabilities of MRFSS and/or MRIP, RFA does not support granting NMFS Regional Administrator authority to close the recreational summer flounder, scup and/or black sea bass fishery based on real-time monitoring. MRFSS by design cannot be used to provide managers real time monitoring of recreational catch, harvest, effort and participation. Consistent with this argument, RFA cannot support inseason adjustments to the recreational summer flounder, scup and black sea bass fisheries when the primary monitoring tool is MRFSS. Both of these proposed management options would completely disrupt any sense of stability in the recreational fisheries. It would be nearly impossible for fishing related businesses to develop efficient business plans with the uncertainty of mid-season closures pending. Anglers would view this scenario as “race to fish” management similar to red snapper in the Gulf of Mexico which proved to be disastrous for the fishing community. Such options are also completely

incompatible with current conservation equivalency and dual management under MAFMC and Atlantic States Marine Fishery Commission (Commission) jurisdiction.

RFA contends that MSA and National Standard 1 guidance requirements for proactive AMs are satisfied through deductions to ABC accounting for management uncertainty as illustrated in the flow charts provided for these species. In addition, regulation modifications account for the previous fishing season's landings relative to that year's landings limit. Recently adopted Performance Standards implemented through the Commission's Summer Flounder, Scup and Black Sea Bass plan, deduct available landings based an average of overage in the three previous fishing seasons. This provides additional assurances that the proactive AM requirement has been met.

RFA is opposed to the implementation of additional reactive AMs in the recreational summer flounder, scup and black sea bass fisheries. Reactive AMs are already a management tool included in the fishery management plan and are the mechanisms that prompt automatic adjustment of seasons, size limits, and bag limits based on a comparison of landings to landings target. The public hearing document qualifies on page 10 that examples of reactive AMs include "modification of subsequent year trip or possession limits."

Action Alternative for: Tilefish ACL and AM

RFA does not support the implementation of ACL or AM in the recreational tilefish fishery. Though once it supported a strong recreational fishery, tilefish is now dominated by the commercial sector and recreational landings should not be set based on the current allocation. The prosecution of this fishery is very demanding and naturally constrains participation and growth. Recreational anglers should be allowed to engage this fishery without ACLs or AMs specific to the sector. This can always be reconsidered in the future if recreational tilefish unexpectedly expands.

V. Section 4.0: Periodic Review of ABC, ACL, and AM Alternatives

RFA supports Alternative 4B: Review of control rules by SSC and Council. While it is stated that the SSC and Council will undertake an evaluation of ABC control rules and AMs if a ACLs for a specific stock is exceeded at a frequency greater than 25%, RFA believes that the MAFMC and SSC should be equally concerned if the fishing communities are unnecessarily restricted from the fisheries, particularly rebuilt fisheries. National Standard 1 mandates achieving optimum yield on an on-going basis. If excessive poundage is removed from a potential landing target due to an unnecessary accumulation of uncertainty, both scientific and management, optimum yield will not be achieved and the fishing community will suffer. Unfortunately, the failure to make meaningful improvements to the recreational data collection unfairly impacts the recreational sector. The application of management uncertainty disadvantages the recreational sector more because its landings are estimated through inefficient survey techniques as opposed to the commercial sector where accounting for every pound of fish sold to dealers is attainable. Equal effort must be made to ensure the recreational sector is given fair opportunity to utilize its sector specific AHT consistent with optimum yield and National Standard 1 guidance.

VI. Section 5.0: Description of Process to Modify Actions

RFA concurs with the following statement contained in this section, “*Flexibility is imperative and must allow for timely modifications give the dynamic nature of fisheries and the environment.*” Many of the problems we face in the recreational sector relative to the lack of access to rebuilding or rebuilt stocks can be linked to the lack of flexibility in MSA. While fisheries science has drastically improved in the last 10 years, numerical modeling is still an imperfect science. More sophisticated models have the ability to give managers a more refined range of outcomes in response to their management choice. However, much of fisheries management is trial and error due to the dynamic nature of the marine environment and the often unpredictable social component of the recreational fishery. For this reason, it paramount that flexibility be explicitly included in the Omnibus Amendment.

RFA will submit additional comments specific to Section 5.0 following the June 2010 council meeting.

Sincerely,



Jim Donofrio
Executive Director



Capt. Adam Nowalsky
RFA New Jersey Chapter Chair